

REMARKS/ARGUMENTS

This paper is submitted in response to the Office Action mailed April 27, 2010. Claims 1-50 were pending in the application. In the Office Action, Claims 1-12, 15, 16, 18, 19, 23-32, 35, 36, 38, 39 and 43-49 were rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 7,547,321 to Silvestri *et al.* (hereinafter "Silvestri"). Claims 13, 14, 17, 20, 21, 33, 34, 37, 40-42 and 50 were previously withdrawn as being directed to a non-elected invention. By this amendment claim 50 has been cancelled. Claims 1-12, 15, 16, 18, 19, 23-32, 35, 36, 38, 39 and 43-49 are presented for reconsideration by the Examiner.

35 U.S.C. § 102(e)

In the Office Action, the Examiner rejected claims 1-12, 15, 16, 18, 19, 23-32, 35, 36, 38, 39 and 43-49 under 35 U.S.C. § 102(e) as anticipated by Silvestri, but stated that "[t]his rejection under 35 U.S.C. 102(e) might be overcome . . . by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and thus is not the invention 'by another' . . ." Office Action, p. 3.

Submitted herewith is the Declaration of Eric K. Mangiardi Under 37 C.F.R. § 1.132, which states as follows:

1. Mr. Mangiardi is a named inventor of U.S. App. Ser. No. 10/674,972; and
2. Mr. Mangiardi is the inventor of the subject matter in Silvestri relating to stents for the biliary tract.

Given the foregoing and the fact that the stents for the biliary tract, as set forth in claims 1-12, 15, 16, 18, 19, 23-32, 35, 36, 38, 39 and 43-49 of the present invention, are not claimed in Silvestri, Applicants respectfully submit that such stents were derived from an inventor of the present application and, thus, is not an invention "by another", as required by 35 U.S.C. 102(e).

For the reasons set forth above, Applicants respectfully request that the rejection of claims 1-12, 15, 16, 18, 19, 23-32, 35, 36, 38, 39 and 43-49 be withdrawn.

CONCLUSION

Applicants request that a timely Notice of Allowance be issued in this case. If there are any remaining issues preventing allowance of the pending claims that may be clarified by telephone, the Examiner is requested to call the undersigned.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including any extension of time fees, to Deposit Account No. 50-2375, and please credit any excess fees to the same deposit account.

Respectfully submitted,

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